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March 22, 2004

VIA COURIER

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

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MAR 22 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Attention. Video Division
Media Bureau

Re: KGPX(TV), Spokane, Washington
Facility I.D. No. 81694
Petition to Amend the DTV Table of Allotments

Dear Ms. Dortch:

On behalf of Paxson Spokane License, Inc., licensee of commercial television station KGPX(TV), Spokane, Washington, we hereby transmit an original and four copies of a *Petition for Rule Making* proposing a new digital channel pursuant to the Commission's rules and policies.

If any additional information is needed in connection with this matter, please contact me.

Very truly yours,


Jason E. Rademacher

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAR 22 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.622(b))	MM Docket No. _____
DTV Table of Allotments,)	RM- _____
Digital Television Broadcast Stations)	
(Spokane, Washington))	

PETITION FOR RULE MAKING TO AMEND
THE DTV TABLE OF ALLOTMENTS

Paxson Spokane License, Inc. ("Paxson"), licensee of commercial television station KGPX(TV) serving Spokane, Washington (the "Station"), by its attorneys and pursuant to Section 1.401 of the Commission's Rules,¹ hereby respectfully petitions the Commission to institute a rulemaking to amend Section 73.622(b), the DTV Table of Allotments, by allocating Channel 43 as an additional allotment for Spokane, Washington. Specifically, the DTV Table of Allotments would be amended as follows:

	<u>Present</u>	<u>Proposed</u>
Spokane, Washington	*8, 12, 15, 20, 20, 36	*8, 12, 15, 20, 20, 36, <u>43</u>

This amendment is requested so that the Station can receive a paired channel for digital operation, thereby permitting full participation in the Commission's implementation of digital television.² Channel 43 is the only in-core allotment currently available that would allow the

¹ 47 C.F.R. § 1.401

² The Media Bureau recently dismissed a similar request by Paxson Syracuse License, Inc. for a paired channel for WSPX-TV, Syracuse, New York (the "Paxson Syracuse Petition"). See Letter from Clay C. Pendarvis to John R. Feore, Jr., Esq., dated February 17, 2004. On March 18, 2004, Paxson filed an Application for Review of that decision arguing that the Bureau's decision and a

Station to operate digital facilities from its authorized analog tower site consistent with the Commission's technical rules. As the attached technical exhibit demonstrates, the Channel 43 allotment satisfies the Commission's allotment criteria under Section 73.622, and the Station's digital operations on Channel 43 would not impermissibly impact any existing TV or DTV service. In addition, the Station is not predicted to cause interference to any protected Class A or television translator station.

The Commission granted the initial construction permit for the Station on April 2, 1998 – too late for the Station to be initially assigned a paired DTV allotment.³ Under the rules and policies governing the conversion to DTV, the Station, which has been on-the-air since 2000, is allowed to continue operating in analog on its single allotment until no later than the close of the DTV transition. At some point, the Station will be allowed to “flash-cut” to digital. This approach, however, would necessarily prevent the Station from participating at all in the digital transition, allowing the Station to join the digital world only at the very end of the transition. To facilitate full participation, Paxson is requesting that the Commission assign the new Channel 43 allotment as the Station's paired DTV channel.

Following Congressional directive, the Commission stated when it issued the DTV Table that it *initially* would assign paired allotments only to those stations which either were on-the-air or held a construction permit.⁴ At that time, the Commission envisioned a highly accelerated

subsequent Commission decision in Muskogee, Oklahoma, *Memorandum Opinion and Order*, FCC 03-321 (rel. March 2, 2004), violate previously announced Commission policies and the relevant provisions of the Communications Act.

³ Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Sixth Report and Order*, 12 FCC Rcd 14588, ¶¶ 8-11 (1997) (describing stations initially eligible for DTV channel allotments) (“*DTV Sixth Report and Order*”).

⁴ *DTV Sixth Report and Order*, ¶¶ 8-11; see also Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, *Second Memorandum Opinion And Order On Reconsideration Of The Fifth And Sixth Report And Orders*, 14 FCC Rcd 1348, ¶ 17 (1998)

DTV transition and accordingly adopted implementation policies designed to facilitate a rapid transition.⁵ Indeed, Congress itself subsequently codified the Commission's 2006 target date for ending the DTV transition.⁶ Thus, in 1997, the decision to leave certain stations without a paired allotment during an expectedly short transition period was not considered debilitating to single-channel broadcasters.

This is no longer the case. The transition has been more protracted and staggered than most anticipated. Questions, for example, about the robustness of the transmission format, the security of digital content, and the interoperability of cable and consumer electronic equipment have hindered the transition.⁷ Even as the pace of the transition has slowed, however, spectrum recovery for public safety services – always a significant element of the Commission's DTV

(“*Second MO&O*”). Congress restricted “*initial* eligibility” for DTV licenses to these stations. 47 U.S.C. § 336(a)(1) (emphasis added). Now more than five years later, it would be disingenuous to argue that the Congressional restriction on *initial* eligibility would prevent the assignment of a DTV allotment to KGPX-DT, especially in light of The Public Health, Security, and Bioterrorism Preparedness and Response Act of 2002, Pub. L. No. 107-188, 116 Stat. 594, enacted June 12, 2002 (the “*Bioterrorism Act*”) (see *infra* note 9).

⁵ Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Fifth Report and Order*, 12 FCC Rcd 12809, ¶¶ 6 (“The more quickly that broadcasters and consumers move to digital, the more rapidly spectrum can be recovered”), 37 (explaining that decision to allow broadcasters flexibility to broadcast non-high definition digital signal designed to facilitate “rapid transition”), 97 (“One of our overarching goals in this proceeding is the rapid establishment of successful digital broadcast services that will attract viewers from analog to DTV technology, so that the analog spectrum can be recovered”) (1997) (“*Fifth Report and Order*”).

⁶ The Balanced Budget Act of 1997 added a new Section 309(j)(14) to the Communications Act. That section states that “[a] broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond December 31, 2006” unless the Commission grants an extension based on specific enumerated criteria. 47 U.S.C. Sec. 309(j)(14). See also *Fifth Report and Order*, ¶ 99 (setting 2006 target date for return of analog spectrum).

⁷ See, e.g., Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television, *Report and Order*, 16 FCC Rcd 5946, ¶¶ 98-105 (2001); Digital Broadcast Copy Protection, *Notice of Proposed Rulemaking*, MB Docket No. 02-230, FCC 02-231, ¶¶ 3-9 (rel.

policies – has become even more important as a result of the attacks of 9/11, further compelling the need for a rapid transition. In response, the Commission, hoping to accelerate market penetration and facilitate the close of the transition, has embraced increasingly aggressive policies to place DTV stations into operation as quickly as possible.⁸ Congress responded as well. Concerned about the pace of the transition and the acceptance by consumers, Congress required the Commission to assign paired allotments upon request to a number of single-channel stations to promote “the orderly transition to digital television, and to promote the equitable allocation and use of digital channels.”⁹

It accordingly would be unreasonable at this time to continue to deny an available DTV allotment to a single-channel station such as the Station, especially when no existing service would be impermissibly impacted by the allocation. There would only be service gains in this case. Assignment of a new DTV allotment would allow the Station to become a full participant in the

Aug. 9, 2002); *Compatibility Between Cable Systems And Consumer Electronics Equipment, Report and Order*, 15 FCC Rcd 17568 (2000).

⁸ See *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment; Digital Broadcast Content Protection, Order*, CS Docket No. 97-80; PP Docket No. 00-67; MB Docket No. 02-230, DA 03-4085 (rel. December 23, 2003) (adopting broadcast flag regulations); *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment, Second Report And Order And Second Further Notice Of Proposed Rulemaking*, CS Docket No. 97-80, PP Docket No. 00-67, FCC 03-225 (rel. Oct. 9, 2003) (adopting cable plug-and-play memorandum of understanding between cable operators and consumer electronics manufacturers); *Remedial Steps For Failure to Comply With Digital Television Construction Schedule; Requests For Extension of the October 5, 2001, Digital Television Construction Deadline, Order And Notice Of Proposed Rulemaking*, 17 FCC Rcd 9962, ¶ 16 (2002) (adopting sanctions for failure to timely construct DTV stations); *Review of the Commission’s Rules and Policies Affecting the Conversion To Digital Television, Memorandum Opinion and Order on Reconsideration*, 16 FCC Rcd 20594, ¶¶ 34-36 (allowing DTV stations to commence operations at low power).

⁹ The Public Health, Security, and Bioterrorism Preparedness and Response Act of 2002, § 531(a), Pub. L. No. 107-188, 116 Stat. 594, enacted June 12, 2002.

DTV transition and generally would facilitate the implementation of digital television. DTV is critical to the future of all broadcasters, but especially to Paxson Communications Corporation (“PCC”), parent company of the Station’s licensee. PCC has spearheaded efforts to introduce innovative digital services such as multicasting that promise to unlock to consumers the full potential of DTV.

Without a paired allotment, the Station is precluded from fully participating in the digital transition. It is not clear when the Station could or would commence DTV service – contrary to the Commission’s desire to place as many DTV stations into operation as possible. Rather than incentivizing consumers to purchase digital receivers or facilitating the return of analog spectrum, the Station would be forced to await a level of consumer equipment penetration that might justify abandoning its analog audience.

With a paired DTV allotment, the Station would ensure that existing service to viewers is preserved during the transition. Those viewers capable of receiving digital signals would receive the benefits of enhanced KGPX-DT programming. Viewers who have not purchased digital equipment would not be disenfranchised. Equally important, a new DTV allotment would increase the amount of digital content available to viewers, thereby creating additional incentive for consumers to purchase digital equipment and facilitate the recovery of spectrum.

Obviously, the Commission understands and has embraced the merits of paired allotments. To avoid service disruption and losses, the Commission initially assigned a second allotment for digital broadcasting purposes to each existing station¹⁰ – even at the expense of

¹⁰ See *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Second Report and Order and Further Notice of Proposed Rulemaking*, 7 FCC Rcd 3340, ¶¶ 9-13 (1992) (setting forth eligibility criteria for paired digital allotments). See generally, *Sixth DTV Report and Order*, ¶ 11.

creating new interference to a significant number of stations.¹¹ Congress, too, which restricted the *initial* assignment of paired allotments, has clearly identified the benefits of assigning paired allotments to single-channel broadcasters, and in some cases has specifically directed that they be assigned. Given the renewed urgency of facilitating the digital transition, assigning a DTV allotment to the Station would be in the public interest.

Accordingly, Paxson requests that the Commission institute a rulemaking proceeding to amend Section 73.622(b) to allocate Channel 43 to Spokane as a paired allotment for the Station. If the Commission grants this petition and modifies the DTV Table of Allotments as requested, Paxson is committed to applying for and constructing a DTV station on Channel 43 at the earliest practical date.

Respectfully Submitted,

PAXSON SPOKANE LICENSE, INC.

By:

John R. Feore, Jr.

Scott S. Patrick

Jason E. Rademacher

Its Attorneys

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Dated: March 22, 2004

¹¹ See *Sixth DTV Report and Order*, Appendix B.

TECHNICAL EXHIBIT
PREPARED IN SUPPORT OF
PETITION FOR RULEMAKING TO
MODIFY THE DTV ALLOTMENT TABLE
STATION KGPX-DT
SPOKANE, WASHINGTON

Technical Narrative

This Technical Exhibit has been prepared on behalf of television station KGPX(TV), analog channel 34, in Spokane, Washington. KGPX(TV) was not allotted a digital transition channel in the Memorandum Opinion and Order (MO&O) concerning reconsideration of the 6th Report and Order in MM Docket No. 87-268. Therefore, KGPX(TV) is seeking a NEW DTV channel for digital operation. A search of the core band (2-51) indicates that channel 43 is the best possible channel for digital use at the present location.

KGPX-DT channel 43 can be allotted to Spokane in compliance with the principal community coverage requirements of Section 73.625(a) at the following reference coordinates:

47° 36' 04" North Latitude
117° 17' 53" West Longitude

These coordinates are the same as KGPX's current analog site. Operation on DTV channel 43 appears possible with an effective radiated power (ERP) of 664 kW utilizing a non-directional antenna with a height above average terrain (HAAT) of 450 meters and a radiation center of 1146 meters above mean sea level (AMSL).

Figure 1 is a coverage map showing the noise-limited coverage contour and the city coverage contour for the proposed facility. As shown all of Spokane is encompassed within both contours (2000 Census).

Allocation Analysis

The proposed Rulemaking meets all of the minimum separation requirements to domestic stations and allotments. Figure 2 provides a summary of interference and service for the proposed channel 43 allotment. Determination of interference and service was based on the procedures outlined in OET Bulletin No. 69 and criteria contained in Sections 73.622 and 73.623 of the FCC's rules. It is believed that the proposed channel 43 allotment is in full compliance with the FCC's 2 percent criterion for *de minimis* impact applicable to DTV allotment modifications under Section 73.623(c)(2). There are no spacing violations or contour overlap to Class A stations.

LPTV/TV translator Impact

The proposed Rulemaking facility will not adversely impact any LPTV or TV translator stations.

Canadian Allocation Analysis

As the proposal is located in the U.S./Canada border zone (within 400 km), a Canadian allocation study was conducted to confirm compliance with the Canadian Letter of Understanding (LOU). For purposes of the LOU, the proposed KGPX DTV allotment (664 kW/450 m) is considered as Class VL. A separation study indicates that the proposed Channel 43 DTV allotment meets the minimum separation requirements to all Canadian allotments.

Therefore, it is proposed to assign the following specifications for KGPX-DT's digital channel operation:

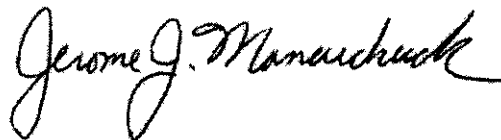
State & City	DTV Channel	DTV ERP (kW)	Antenna Radiation Center	Antenna HAAT (m)
WA, Spokane	43	664 kW	1146 m AMSL	450 m
Reference Coordinates: 47° 36' 04 N. Latitude/117° 17' 53" W. Longitude				

It is also proposed to amend the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, as follows:

Channel No.

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Spokane, WA	13, 15, 20, 30, 36, *39	13, 15, 20, 30, 36, *39, 43

This instant Rulemaking petition is not contingent upon any pending or future application for construction permit for any facility.

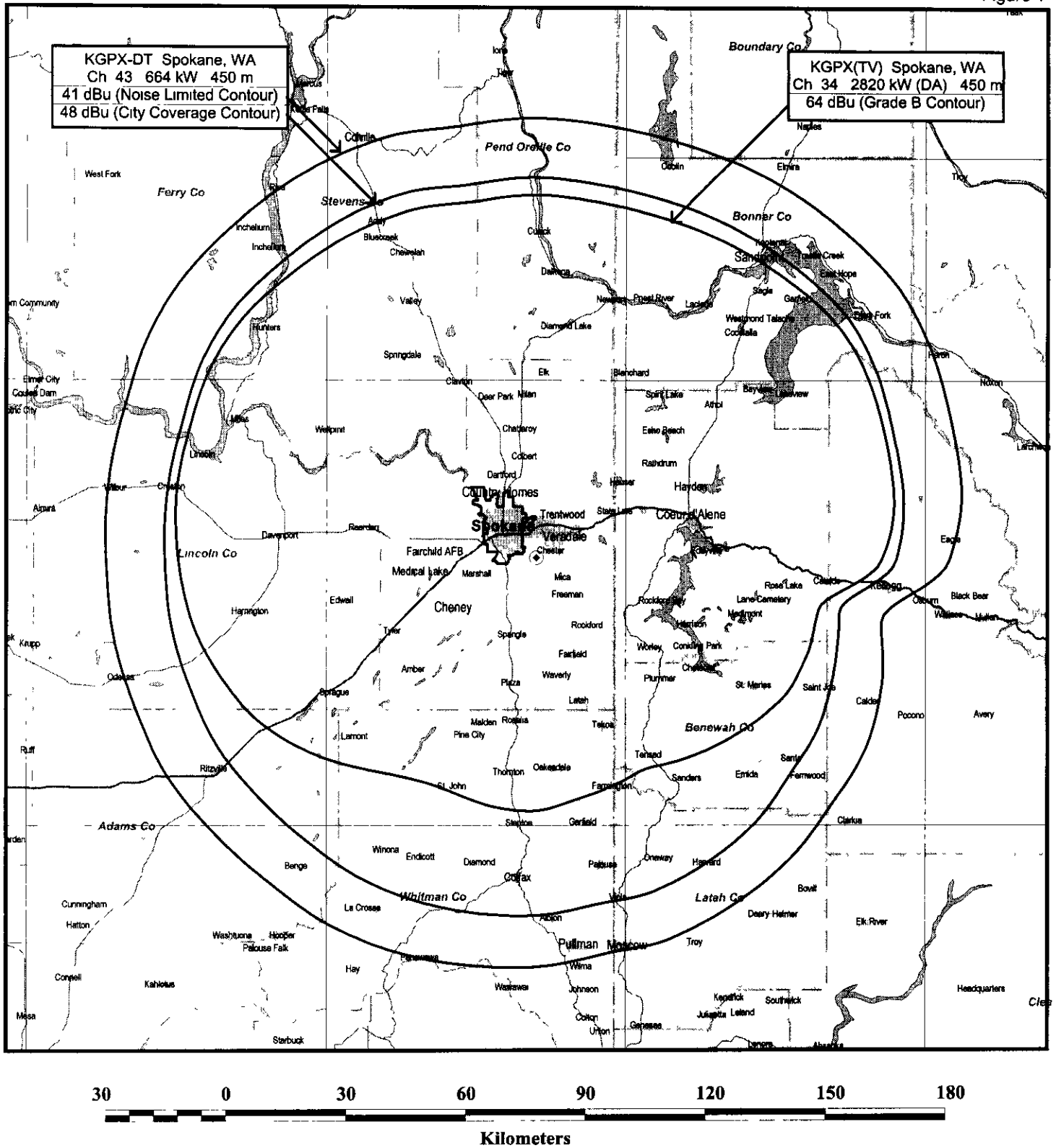


Jerome J. Manarchuck

du Treil, Lundin & Rackley, Inc.
201 Fletcher Avenue
Sarasota, Florida 34237
(941) 329-6000

March 19, 2004

Figure 1



PREDICTED F(50,90) COVERAGE CONTOURS

STATION KGPX-DT
 SPOKANE, WASHINGTON
 CH 43 664 KW 450 M

du Treil, Lundin & Rackley, Inc. Sarasota, FL

TECHNICAL EXHIBIT
 PREPARED IN SUPPORT OF
 PETITION FOR RULEMAKING TO
 MODIFY THE DTV ALLOTMENT TABLE
 STATION KGPX-DT
 SPOKANE, WASHINGTON

Summary of Channel 43 OET-69 Allocation Analysis

Facility	Channel	Baseline Service Population (1990)	Net New IX Caused by Proposed (1990)	Percent of Baseline (%)
KAYU-TV, Lic. Spokane, WA	28	No Interference Predicted		
KUID-DT, RM Moscow, ID	35	No Interference Predicted		
KVBI-LP, Lic. Clarkston, WA	42	No Interference Predicted		
KVEW-DT, CP Kennewick, WA	44	No Interference Predicted		
KVEW-DT, Alt. Kennewick, WA	44	No Interference Predicted		